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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE M.JAICHANDREN

LETTERS PATENT APPEAL No.45 of 2003

1.W.A. D'Souza
2.H.E.Wilkins .. Appellants

Vs.

Dr. Geoffrey K. Francis
also Known as Dr. G.K.Francis .. Respondent

This Letters Patent Appeal is filed under Clause 15 of Letters Patent against the judgment of this Court dated 22.04.2003 in Contempt Petition No.69 of 2003.

For Appellants : Mr.N.D.Bahety
For respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by P.K.Misra,J)

Heard Mr.N.D.Bahety, learned counsel for the appellant. There is no appearance on behalf of the respondent. Yesterday, when the matter was taken up for hearing, learned counsel for the respondent was also absent.

2. The present appeal has been filed under Clause 15 of Letters Patent against a part of the order dated 22.04.2003 in Contempt Petition No.69 of 2003. Such Contempt Application had been filed by the present appellant alleging that the respondent in the contempt petition (respondent in the present appeal) had violated the Court's order of interim injunction. Learned Single Judge came to the conclusion that the order of the court had been violated, but in view of the apology tendered by the respondent, it was observed that there was no further action required in the contempt proceeding. The learned Single Judge in paragraphs 10 and 11, has observed as follows:

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" 10. It is seen from the records that the Indian Missionary Society, who had given the cheque for Rs.30,00/- is now seeking refund of the amount. Now this amount is available only with the Friend-In-Need Society and it is the duty of the present office bearer to return the same. The respondent is no longer an officer bearer of the society. Moreover, he is not in possession of the amount. Hence, the office bearers of the Society are directed to return the sum of Rs.30,000/- to the third party forthwith.

11. For the reasons stated above, the unconditional apology tendered by the respondent is accepted and further action is dropped. The Officer Bearers of the Friend-In-Need Society are directed to return the sum of Rs.30,000/- to the third party within one week from today. The Contempt Petition is closed."

3. The learned counsel for the appellants submitted that as a matter of fact, a sum of Rs.30,000/- (Rupees Thirty thousand only) had been encashed on the basis of the instruction of the respondent himself and subsequently a further cheque had been issued by the respondent in favour of another organisation of which such respondent himself was the President.

4. For the purpose of deciding this appeal, it is not necessary for us to consider this aspect of the submission, as in our opinion, while dealing with the Contempt Petition, the learned single Judge should not have dealt with the matters which were not directly in issue in the contempt petition. In the contempt petition, learned Judge should have concentrated on the question as to whether there had been any wilful violation of the Court's order. As a matter of fact the only question which arose for consideration, as reflected in paragraph 6 is as follows :

(i) Whether the respondent has committed willful or intentional disobedience of the order passed by tis Corut dated 30.07.2002?

In such view of the matter, when no specific application had been filed, such question alone was to be decided and it was not appropriate on the part of the learned single Judge to issue direction which did not directly arise out of the contempt proceeding.

5. Similar view has been expressed in the decision reported in 2006(1) CTC 247 (S. ARUMUGANAINAR v. M/s. JEENATH ROADWAYS). Accordingly, the direction contained in paragraphs 10 and 11 to the

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effect that a sum of Rs.30,000/- (Rupees Thirty thousand only) should be returned by the office bearer of the Society to the third party Indian Missionary Society is set aside. The appeal is allowed accordingly. No costs.

rj/dpk

Sd/
Deputy Registrar[Judicial] I/C

/true copy/

Sub Asst.Registrar

To

The Sub Assistant Registrar
Original Side
High Court
Madras.

+ Two Ccs to Mr.N.D.Bahety, Advocate Sr.No.30604.
+ One Cc to Mr.B.Christ Das, Advocate Sr.No.30699.

VC (CO)
RSM/21.8.2006

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